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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 717

PETER P. CORCORAN,

Petitioner,

against

ROYAL DEVELOPMENT COMPANY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

DAVID M. PALLEY,
of New York, N. Y.,
Counsel for Petitioner.

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ARGUMENT:

I. This is an action for the administration by a court of equity of the distribution of the assets of a corporation in dissolution. The plaintiff seeks no personal judgment; demands no personal relief. The measure of the amount in controversy is therefore not the size of the plaintiff's claim against that corporation but the value of the estate to be administered 7

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

To the Honorable Harlan F. Stone, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Peter P. Corcoran respectfully prays that a writ of certiorari issue to review the decree of the United States Circuit Court of Appeals for the Second Circuit, entered on the 27th day of August, 1941, which affirmed the decree of the United States District Court for the Eastern District of New York, made by Moskowitz, D. J., and entered

on the 19th day of October, 1940. The District Court's decree dismissed the complaint on the ground that the Court lacked jurisdiction because the amount in controversy was not in excess of $3,000.00, exclusive of interest and costs.

Statement.

On August 6th, 1940, Royal Development Company, a Montana corporation, the respondent herein, duly voted to dissolve. Having taken the position that it had performed and discharged all its contracts and obligations, it declared that it would distribute its assets to its stockholders. On August 6th, the respondent had outstanding First Royalty Certificates, Second Royalty Certificates and Participating Contracts in the aggregate principal amount of $1,121,000.00, which it carried upon its books and records as liabilities.

On August 7th, 1940, the petitioner, Peter P. Corcoran, on behalf of himself and all other creditors of the respondent, filed a bill for a declaratory judgment in which he prayed that the court adjudge that he and the holders of First Royalty Certificates, Second Royalty Certificates and Participating Contracts, are its creditors and are entitled to priority in the distribution of its assets.

The petitioner is the owner of seven Participating Contracts in the aggregate principal amount of $1,400.00, and the respondent moved to dismiss the complaint on the ground that the Court lacked jurisdiction because the amount in controversy was less than $3,000.00, exclusive of interest and costs. The respondent took the position that the amount in controversy must be measured by the size of the petitioner's claim against it. Both the District Court and the Circuit Court of Appeals sustained the respondent.

It is the contention of the petitioner that in the case at bar, the amount in controversy must be measured, not by

the individual claim of the petitioner, nor by the distributive share which he might receive in liquidation of the respondent's assets, but by the size of the estate to be distributed.

The petitioner asked for no personal judgment, demanded no personal relief. He prayed that the rights of all the holders of Royalty Certificates and Participating Contracts be adjudicated, and that the distribution of respondent's assets be made accordingly. He particularly requested that the provisions in the articles of incorporation and in the certificates of capital stock, which purport to grant to the stockholders a lien upon the $1,670,000.00 principal amount of bonds on deposit with the Chase National Bank, be adjudged void as against creditors. For himself, the petitioner asked no greater reward than his distributive share of the respondent's assets, *pari passu* with other creditors.

The contention of the petitioner was overruled. It was the opinion of both lower courts that under the rule laid down by this Court in Lion Bonding & Surety Co. v. Karatz, 262 U. S. 77, they had no choice but to sustain the contention of the respondent. In its opinion, the Circuit Court of Appeals said, in part, as follows:

> "In such an action there can be no question since Lion Bonding & Surety Company v. Karatz, 262 U. S. 77, 85, 86, 43 S. Ct. 480, 483, 67 L. Ed. 871, that the amount due upon the plaintiff's debt is the 'amount in controversy'. The Supreme Court has never indicated any disposition to recede from that ruling, and in either the same, or substantially the same, situation three circuit courts of appeal have followed it. Robbins v. Western Automobile Ins. Co., 7 Cir., 4 F. 2d 249; Pianta v. H. M. Reich Co., Inc., 2 Cir., 77 F. 2d 888, 890; Frank & Lambert, Inc. v. Rosengren, 8 Cir., 97 F. 2d 460. It was perhaps possible as a new question to take the view that the amount of property to

be distributed was the test, as indeed some judges did (Towle v. American B. L. & I. Society, C. C., 60 F. 131; Jones v. Mutual Fidelity Co., C. C., 123 F. 506; United States Radiator Corp. v. Doody, D. C., 5 F. Supp. 471) but the law is now too well settled to admit of any debate."

Petitioner respectfully submits that the rule of this Court in the Lion Bonding case has been misinterpreted by the lower courts.

The Circuit Court of Appeals went further than the District Court and expressed disapproval of the petitioner's form of action.

The declaratory judgment form of action has been used extensively in this country and in England for the determination of the relative rights of creditors and stockholders in connection with the liquidation of corporations in dissolution.

Borchard, *Declaratory Judgments* (2nd Ed.), 695.

It has been the belief of the petitioner that an indication by the Court that the holders of Royalty Certificates and Participating Contracts are creditors and are entitled to priority in the distribution of the respondent's assets would be sufficient, and that sequestration of its assets would not be necessary. However, the judgment could be implemented by an application to the courts for further relief. U. S. C., 28:400; Judicial Code § 274d.

The Questions Presented.

Did the Circuit Court of Appeals rightly decide that the District Court had no jurisdiction on the ground that the amount in controversy did not exceed $3,000.00, exclusive of interest and costs?

Reasons for the Allowance of a Writ.

The rule enunciated by this Court in Lion Bonding & Surety Co. v. Karatz, is being misinterpreted by the lower courts and it is important that this Court should clarify and define the application of that rule.

WHEREFORE, it is respectfully submitted that this petition for a writ of certiorari to review the decree of the Circuit Court of Appeals for the Second Circuit should be granted.

PETER P. CORCORAN,
By DAVID M. PALLEY,
Counsel for Petitioner.